No response filed

IN THE SUPREME COURT OF THE
UNITED STATES

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SUPREME COURT, U.S.

OCTOBER TERM, 1978

ROY CHARLES BELL, SR.,
Plaintiff-Appellant,
VS.
CLARICE W. CHURCH, ET AL.,
Defendants-Respondents.

NO. 78- 78-5660

ON APPEAL FROM THE FIFTH
CIRCUIT COURT OF APPEALS

NO. 78-3057

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1978

ROY CHARLES BELL, SR.,
Petitioner-Appellant,
VS.
CLARICE M. BELL,
Respondent-Appellee.

NO. 78-5660

Petitioner, ROY C. BELL, SR., prays that an order by the Fifth Circuit Court of Appeals be reversed. This Court refused to issue a writ of mandamus and/or prohibition ordering the Trial Court judge of the District Court, Northern District of Georgia, Atlanta Division, to conform to and exercise its prescribed jurisdiction as dictated by Rules, Fed. R. Civ. P., as set forth by Act of Congress. The enforcement of Rules of Procedure of the Federal Courts is vested in this Court by Acts of Congress.

The District Court judge dismissed petitioner's motion to join indispensable parties in a removal action drawing into question whether the acts of certain State officials in exercising the powers of their State offices over petitioner are acting under color of office and law because of their participation in a scheme unlawfully converting State funds for improper use to their personal pecuniary gain which violates rights of petitioner and is forbidden, inter alia, by the Georgia Constitution and Title 42 U.S.C. §1971. Further, the District Court dismissed petitioner's complaint without benefit of an evidentiary hearing and failed to enforce its order directing parties sought to be joined to appear and give testimony as to why they should not have been joined as parties in petitioner's removal action as indispensable to its full adjudication of facts alleged thereby settling all issues raised therefrom.

The acts of the Trial Court judge violated rights of petitioner protected by the Fifth Amendment's due process clause

and prevented the resolution of issues to be formed by facts alleged in petitioner's removal action, the resolution of which may well dictate that state officials participating in Act 1000, Georgia Law 1976 and prior acts incorporated therein, are ineligible to seek or hold public office and are guilty of having committed acts defined as crimes by the Georgia Constitution. A general election will be held November 7, 1978 in the State of Georgia. The questioned eligibility of two parties sought to be joined in petitioner's removal action are candidates in this election. If this election is permitted to proceed and ineligible candidates are elected to office, the cost, unnecessary expenses and other detriments to the public's interest to undo same would be great.

Petitioner prays that the Court will review and call for the records below and after reviewing same, reverse the Fifth Circuit's ruling denying the issuance of a writ of mandamus to enforce Procedural Rules of Fed. R. Civ. P. and Fed. R. App. P. in the District Court, Northern District, Atlanta, Georgia. Petitioner prays that this Court will issue any and all other orders it deems just in the exercise of its appellate power to protect his rights and the rights of the public and issue a writ of mandamus and compel the District Court to conduct an evidentiary hearing of his removal action and that said general election of November 7, 1978 be stayed until such time as proper candidates are qualified as defined by Georgia Law as to these state officers, or else this Court would have been deprived of its power of appellate jurisdiction by the acts of the said District Court.

JURISDICTIONAL STATEMENT

OPINIONS BELOW

1. The order (App. 1) of the United States Court of Appeals for the Fifth Circuit denying petitioner's petition for writs of mandamus and/or prohibition.

2. The order (App. 7) of findings of fact and applicable conclusions of law by the Trial Court and judgment pursuant thereto was entered September 1, 1978, denying petitioner's motion to join state defendants as indispensable parties and

remanding the case to the Superior Court.

3. The order (App. 11) denying petitioner's motion for reconsideration and request for stay pending appeal.

4. The order (App. 6) refusing to certify that petitioner's appeal is taken in good faith.

JURISDICTION

The order denying petitioner relief by the issuance of a writ of mandamus was entered by the Fifth Circuit, October 17, 1978 (App. 1). A timely motion for rehearing is not required. An appeal of the District Court's rulings denying petitioner's motion for joinder and dismissing his removal action without an evidentiary hearing has been taken (App. 4). This Court has jurisdiction pursuant to but not limited to Title 28 U.S.C. §s 1651, 2071, 2072, being an appeal which draws into question, and the exercise thereof of the power of this Court to

> "issue all writs necessary or appropriate in aid of"

its

> "Jurisdiction and agreeable to the usages and principles of law"

to enforce rules of practice and procedure prescribed by this Court in the district courts and courts of appeals of the United States in civil actions to ensure

> "such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal of the denial of the Fifth Circuit to issue a writ of mandamus directing the district court judge to exercise jurisdiction over parties and subject matter involves the Fifth and Fourteenth Amendments to the Constitution of the United States.

This appeal also involves Titles 28 U.S.C. §s 2071, 2072, 1651 providing for Rules which may be established by the Federal Courts for the conduct of their business as provided by Act of Congress and the authority of the Supreme Court to prescribe rules governing practice and procedure in the district courts and courts of appeal and the power of this Court to enforce said rules and procedures by writ of mandamus for the protection of its powers of appellate jurisdiction.

QUESTIONS PRESENTED

1. Whether the District Court's order of findings of fact and conclusions of law, combined with a judgment entered pursuandt thereto dismissing petitioner's complaint violated Fed. R. Civ. P. Rules 12(b)(6)(d), 15, 19, 41(b), 52, and thereby denied petitioner rights protected by the Fourteenth and Fifth Amendments to the Constitution.

2. Whether the impermissible application or non-application of rules of procedure as dictated by Congress and the Supreme Court, by either the District Court or Circuit Court, a basis for relief by mandamus where said negative impermissible application or lack of, results in the denial of rights of petitioner protected by the Fourteenth and Fifth Amendments to the Constitution.

3. Whether the absence of any references by the Trial Court's order of findings of evidentiary facts and conclusions of law pertaining to that court's denial of declaratory and injunctive relief nor any references thereof in its judgment, were basis for remand for a proper trial and the issuance of a writ of mandamus to compel obedience to and compliance with Federal Rules of Procedures either Fed. R. Civ. P. by the Fifth Circuit.

4. Whether the trial court's dismissal of petitioner's removal action without an evidentiary adversary hearing with requested trial by jury violated Title 28 U.S.C. §2072 and the Fifth Circuit erred in denying petitioner relief by writ of mandamus as prayed for to protect rights of due process guaranteed by the Fifth Amendment.

5. Whether the trial court's ruling was in error that it lacked authority to exercise jurisdiction over the State officers sought to be joined at this level by petitioner, where allegations in this removal action, evidenced by enactments of the Georgia Legislature reveal violations of the United States and Georgia Constitutions by these officers, and because of their acts under color of law, and office, diverting for the pecuniary gain of select others via unconstitutional legislative retirement schemes, millions of dollars in public funds, as illegal salaries,

income and profits via, inter alia, a private, legislatively enacted "gift fund", with no disclosure provisions as to donors, operated by trustees simultaneously acting as heads of the executive, law enforcement, and fiscal division, all divisions of the State of Georgia government, and said acts, all illegal, are for the exclusive profits, and benefits of individual members forming the judicial branch of government for the State of Georgia and for their respective spouses who have chosen to participate in this scheme to circumvent restrictions of the Georgia Constitution as to salaries and thus violate rights of petitioner protected by the Fourteenth Amendment.

6. Whether a trial court judge should have disqualified or rescued himself in a case alleging conduct, constitutionally impermissible, and proscribed by a state's constitution, with criminal sanction, and added penalty of inability to hold or seek public office, imposed on violators, may this judge proceed, and rule in this case alleging facts raising issues of alleged violations by former fiduciaries who are sought to be joined as parties-defendants, one of whom, while trustee of the judge, nominated him to his judgeship, and may he dismiss this motion for joinder of these former trustees as well as the case, without evidentiary hearing, while himself, may be guilty in the past of the same alleged violations as his trustees, and may be subject to the same sanctions and if he does proceed, and dismiss without hearings said case or cases and deny joinder are these dismissals and denial of joinder, constitutionally permissible and afford petitioner the right of due process protected by the Fifth Amendment and if not, is petitioner entitled to relief by this Court? (App. 19).

STATEMENT OF THE CASE

On October 17, 1978, the Fifth Circuit Court of Appeals denied petitioner a writ of mandamus and/or prohibition (App. 1). The denial of this relief sought was as a result of the failure of the district court to follow prescribed rules of procedure in adjudicating issues presented to it for final resolution. The district court on August 31, 1978, declined to exercise its jurisdictional powers over certain officers of the state,

pursuant to a motion presented to the court for joinder of indispensable parties (App. 7). The court instructed petitioner to proceed with the presentation of the allegations contained in his removal action. Petitioner's removal action (App. 5) was remanded and motion for joinder denied (App. 8). On September 11, 1978 petitioner filed a motion for reconsideration with attached brief and, inter alia, prayed for injunctive relief and stay, pending appeal (App. 2 and App. 5). On September 13, 1978, an order was entered denying petitioner's motion for reconsideration, injunctive relief and stay pending appeal (App. 11). On October 3, 1978, petitioner filed a notice of appeal of the ruling by the trial court denying joinder of parties and remanding his removal action to the Superior Court (App. 4). Petitioner filed his notice of appeal in forma pauperis. The district court refused to certify that appeal is taken in good faith (App. 6) on October 19, 1978. Also, on this date, the order denying petitioner's application for writ of mandamus and/or prohibition was filed (App. 2).

Petitioner filed a joint petition for writs of mandamus and prohibition in C78-1442A and C78-04A in the Fifth Circuit, No. 78-3057. Relief in C78-1442A was denied. Reference is made to C78-1442A in petitioner's request for a rehearing en banc, No. 2342 in the

"STATEMENT OF FACTS"

segment of this petition in paragraph 24, at page 4 and is attached to petitioner's jurisdictional statement in his appeal of the Fifth Circuit's dismissal of No. 2342 to this Court as App. 10. Petitioner received a request from the Clerk of the Fifth Circuit to resubmit this petition for rehearing en banc (App. 9). On October 12, 1978, a supplemental petition for rehearing en banc was mailed to that Court (App. 10). A ruling has been received by petitioner in this related case as petitioner's original action in the district court alleging substantially the same set of facts as are alleged in C78-1442A on appeal to this Court as No. 78-3057 from the Fifth Circuit (App. 21).

Petitioner has requested of the court reporter that a

transcription be made of proceeding in C78-04A and C78-1442A in keeping with the rules for one proceeding in forma pauperis before this Court. A reply has not been received from this request (App. 8).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Amendment Five to the Constitution, due process clause, and Amendment Fourteen and clauses thereof are involved.

Petitioner filed a removal action in a Federal District Court and sought to join indispensable parties. This action is a result of this same Court's failure to adhere to Federal Rules of Procedure in a prior complaint which failure necessitated this present action being filed. This present action was filed in the District Court on August 24, 1978, Northern District, Atlanta Division, with request for trial by a jury. Petitioner's removal action was dismissed in the District Court without an adversary evidentiary hearing on the merits of his removal action. On August 30, 1978, a hearing was scheduled on a motion for joinder. The parties to be joined were properly served with summons and ordered to appear before the Court. The parties failed to appear. The court ruled it lacked jurisdiction over the parties sought to be joined, but instructed petitioner to present his argument on his petition for removal. Petitioner relied upon the facts alleged in his petition and brief for removal as a basis for the court's jurisdiction. The parties to petitioner's petition for removal and motion for joinder were absent from the courtroom. Petitioner sought declaratory relief from the District Court. Parties against whom relief was sought by joinder refused to obey the District Court's order to appear and show cause why petitioner should not have been granted said declaratory relief as to them. The failure of the court to enforce its order as to these parties, denied petitioner basic rights prescribed by law as regards practice and procedure in the Federal Court System. The act of defiance by these parties allowed to disobey a Federal Court Order defeated petitioner's cause of action.

The District Court erred and violated Acts of Congress and the power of this Court to enforce said acts by failure to enforce the jurisdiction of the court over those parties. The Fifth Circuit erred by denying petitioner's petition for writ of mandamus to uphold the authority of the Federal Court by ordering the District Court judge to perform a duty prescribed by the United States Constitution. It appears from petitioner's removal petition, and brief in support thereof, and motion for reconsideration and attached brief contained in the appendices of this petition that the district court has failed to perform its duty prescribed by law and in so doing has denied petitioner due process of law under the Fifth Amendment.

From the papers filed by petitioner in this action he alleges that the Governor, Attorney General, Fiscal Chief, legislative and judicial systems of Georgia have fused in violation of petitioner's constitutional rights. The trial court is aware of the Georgia Law, 1945, creating both the function and position of a judge emeritus by Act 365 (App. 12) approved March 9, 1945 and its sequel, Georgia Law 1968, Act No. 699 (App. 13). The Trial Judges and Solicitors Retirement Fund,ibid, at page 263, Section 7, "GIFTS", of "anything of value" is a conduit blatantly soliciting, and providing for, illegally, an increase in salary. At page 266 of Act. No. 699 (App. 13), there is a provision for additional income paid from State funds, prohibited by the Georgia Constitution.

> "The State Treasurer is hereby authorized and directed to pay into the Trial Judges and Solicitors Retirement Fund monthly employer contributions which shall be equal to the amount contributed montly by the superior court judges and solicitors general."

at page 265, Section 11, (a),

> "The basis for employer and employee contributions to said Fund with respect to judges of the superior court shall be the salaries from State funds provided by law ...State Treasurer is...directed to deduct monthly from such salaries ten per cent...employee contribution to the Fund."

Section 11(a) of this same law provides for an increase in salary of ten percent for judges, superior courts and for solicitors of these courts. The same for all other judges and solicitors of

inferior courts as spelled out by this Act except for the provisions of Section 2(b) at pages 260, 261. At page 264, ibid, Sections 8(c)(d), 9, create a fusion of the three branches of government in the State of Georgia. The State is the "Employer", Section 2 (e), at page 261. This Act for purposes of increasing salaries, officers of the State become employees as well as independent agents, empowered by law to exercise discretion while acting for and in behalf of this State. At page 261, Section 3(a), ibid,

> "...the Trial Judges and Solicitors Retirement Fund which shall be administered by the Board of Trustees of the Employees' Retirement System of Georgia;"

Ibid, at page 262, Section 5,

> "The Board is hereby given the following powers and duties; to contract with proper Federal authorities for Old Age, Survivors' and Disability Insurance coverage under the Social Security Act;"

no such provisions are made to classify other persons serving the Court as employees, i.e., clerks, bailiffs, as officers of the State to take advantage of the benefits of this Act for an increase in salary.

The administrative expenses to operate this "Fund" is provided by Section 4(a), ibid,

> "All administrative expenses shall be paid from said special account."

No such provision exists in Georgia Law, 1945, Act 365 (App. 12) Compared with Act 1000, Georgia Law, 1976, attached to App. 4, as exhibit 7, this expense of operation is charged to the State thereby increasing the income available for these judicial officers of the State. At page 601, Section 21 of this Act 1000, Georgia Law, 1976,

> "To pay the administrative expense of the Fund...upon receipt of a request from the Board of Trustee",

Consisting of the Governor, Attorney General and Fiscal Chief,

> "the Fiscal Division...is...directed to pay from funds appropriated...for the operation of the superior courts of the State, into the Fund...one percent of the compensation paid from State funds to the judges of the Superior Courts of Georgia for personal services rendered by them as reflected by the State Auditor's Report for the previous year."

A similar 2% amount is taken from State funds via Section 27, ibid, as amended on page 605,

> "the Fiscal Division...is directed to pay from funds

appropriated..for the operation of the superior courts of the State into the Fund, two percent (2%) of the compensation paid from State funds to the District Attorneys of the Superior Courts of Georgia for personal services rendered by them as reflected by the State Auditor's Report for the previous fiscal year.

Georgia Law 1968, No. 699 (App. 13), at pages 269, 270, Section 16(a) provides for further increase in salary from the general tax fund of the States. At page 270, ibid,

> "The governmental units paying the costs of the operation of said courts are hereby authorized, but not required, to pay any part or all employer contributions for such prior service and said governmental units are hereby authorized to expend public funds for such purpose as a part of the costs of operation of such courts."

After the serving of a minimum of ten years, creditable service, a member of Act 699 (App. 13) may retire. Maximum benefits are based upon creditable service of twenty-five years and reaching the age of sixty-five, Sections 18, 19, 20, 21 at pages 271-273. As in Section 19, a member may retire prior to age 65 at age 60 with a minimum of ten years of creditable service. Creditable service includes time spent in the military as provided by Act No. 700 (App. 15), Georgia Law 1968, at pages 275 and 276. This act also counts any time spent in the general assembly, at page 264, Section 8(c), or a Superior Court judge who has served as an inferior court judge or solicitor, or again at page 264, 265, Section 9, any member who was an employee or official who was a previous member of the Employees' Retirement System of Georgia. Hence, upon election any member of this Act may immediately become a Judge Emeritus if he has accumulated ten years of creditable service resulting from service in the military, as an employee of the State who belonged to the Employees' Retirement Fund, Section 9, page 264, as a trial court judge or solicitor or as a member of the General Assembly. Section 8(c) at page 264, ibid,

> "Any member of the General Assembly who has been in continuous service....becomes a judge of the superior court or solicitor general by election or appointment, shall be eligible to become a superior court judge emeritus or solicitor general emeritus...regardless of the time at which any such member becomes a judge of the superior court."

At page 273, ibid, Section 22 provides for further increase in salary by six percent in interest payments.

> "...if a member ceases to hold a position or office covered by the Fund, he may withdraw the total sum

with interest."

Ibid, Section 23 also provides for the payment of interest by the State to a member's estate for the enrichment thereof. Section 27, ibid, at page 274, provides for further increase in money.

> "To pay the administrative expense of the Fund...the State Treasurer is...directed to pay...into the Fund ..one percent (1%) of the compensation paid from State funds to the judges and solicitors of the superior courts of Georgia for personal services rendered by them..."

There is a further increase in salary provided by Section 25 at page 274.

> "...retirement benefit..return of contributions...and the moneys in the Fund...are hereby exempt from State, county, or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever and shall be unassignable."

Further enrichment to the estate of these members is provided by Act 700, Georgia Law 1968 at pages 275-277 (App.15), supra, providing for spouse benefit. This act requires a contribution of five percent by the State of the salary paid a member. At page 266.

> "Any judge so elected shall pay an amount equal to two percent (2%) of his State salary for each year of prior service as judge of Superior Court up to the time of making such election and shall thereafter contribute, in addition to the five percent (5%) contribution required by this Act, two percent (2%) of the salary paid to him by the State of Georgia which amount shall be deducted from such salary by the State Treasurer and deposited into the Superior Court Judges Emeritus Fund."

At page 277, ibid, 2(b) further enrichment of the estate of these members is provided for.

> "..the widow of such Judge shall receive for the remainder of her life a monthly benefit equal to the Emeritus salary which the Judge was drawing or which he was eligible to draw at the time of his death..."

Compare the requirement Act 947 (App. 16), Employees' Retirement System Act Amended, Georgia Law 1976, at page 456.

> "...any employee..after January 1, 1954, to the date any such official or employee became a member of the System shall be credited as membership service credit upon payment into the retirement system before January 1, 1977, the employer and employee contributions, plus regular interest thereon, for such service."

The Judges and Soliciotrs have a decided advantage over "regular employees." There is no provision for the State to pay the employer portion for prior service. Compare Georgia Law 1968, Act No. 699, at page 270,

"The governmental units paying the cost of the operation of said courts are hereby authorized.. to pay any part or all employer contributions for such prior service."

Compare also if a "regular employee" receives a raise in salary it appears in order to reap the benefit of an increase in retirement benefits at this level of salry increase, he is required to pay employer's and employee's contributions plus interest, retroactive to the time of joining of the Employees' Retirement Fund. Many "regular employees" of the court are paid such low incomes it appears that they may not be financially able to pay said retroactive amounts and therefore could not reap the benefit of an increased pension benefit. The results, there is more money left for the Trustees, Judges and Solicitors from which to take their percentages for administrative expenses. The one percent (1%), two percent (2%) at page 601, Section 21 and page 605, Section 28 (App. 13), Act No. 699.

Consider further, Section 17 of Act 1000 (App. 4), page 600, "Tax Exemption" of all retirement income, add to this, increases from, Section 4(b), investment of State funds for the benefit of these members, one can only guess at what figure such investments add to the salaries of said members, ibid,

"17(b) The Board shall have full power to invest and reinvest such fund",

for the benefit of its members. Consider again, ibid, Section 9(b). After ten years of actual service, creditable service may be added to this time for early retirement to become a senior judge or gain that position. Maximum early retirement benefits are limited to seventy-five percent (75%) of maximum retirement pay which is two thirds (2/3) of $32,500.00 for superior court judges or $21, 667.00 per year. Add to this the maximum proceeds of Section 9(b) at page 593, Act 1000, per year and said judge's salary is now increased to $47,677.00 for maximum retirement pay or $45,250.00 for early maximum retirement pay. These maximum amounts are achieved by a judge who chooses either to serve sixteen actual years of service and receive $21,677.00 or one who chooses to serve ten years of actual service and be limited to a maximum amount of seventy-five percent (75%) of $21,677.00 or $19,250.00 and adding to either

of these two figures the maximum amount allowed by Section 9(b), ibid, per year or $26,000.00 which equals either $47,677.00 and $45 250.00 per year. These amounts are actually more because the $21 667.00 and $19,250.00 are free from State taxes. Section 9(b), and the expense of seeking re-election.

"Such senior judges shall be compensated, in addition to the retirement pay provided for herein in the amount of $100 per day for such services. In addition to such compensation such judges shall receive their actual expenses and shall receive mileage at the same rate as other State employees for such services... Such compensation..shall not affect, diminish or otherwise impair the payment or receipt of any retirement or pension benefits of such judge."

Considering that superior court judges in the Atlanta Judiciary Circuit are elected to office for a term of eight years versus terms of office for four years for all other such judges in Georgia, an appointment to this office or election amounts to a lifetime office. The same effect is achieved by Act 183, Georgia Law 1953, for Supreme Court Judges (App. 14) as well as Court of Appeals Justices in terms of life time appointment at two-thirds (2/3) pay plus expenses saved by not having to seek re-election to office.

An Act, Georgia Law 1978, No. 1458 at page 2173 (App.17), creates the District Attorneys Retirement System and separates from Act 1000, Georgia Law 1976. This Act is essentially the same as Act 1000 except it provides for Assistant District Attorneys, the gift provision, Section 7, page 2177 is present, employer contributions, at page 2179, Spouses' Benefit, Section 13, at page 2181. The administrative expense section is different from Act 1000, supra. The amount may or may not be greater than two percent (2%), at page 2184, Section 18, ibid,

"To pay the administrative expense of the Fund...., the Fiscal Division..is directed to pay from funds appropriated...for the operation of the superior courts of the State, into the Fund an amount equivalent to the actual expenses incurred by the Board...",

which amount may be lesser or greater than a fixed amount of one percent (1%) two percent (2%) as in Act 1000.

These are substantially the facts presented to the Trial Court judge in addition to allegations of facts set forth in petitioner's removal action which the trial court remanded for lack of jurisdiction and a lack of a federal question authorizing relief.

Petitioner is aware that the only question properly before this Court is whether the trial court denied him due process under the Fifth Amendment by failure to adhere to and apply Rule of Procedure, Fed. R. Civ. P., for which a writ of mandamus is sought to compel adherence to same. Due to seemingly obvious violations of the Georgia Constitution and Fourteenth Amendment rights of petitioner, and the acts of public officials whose violations of law are such a grave nature that said illegal acts threaten the concepts of the United States Constitution and the powers of enforcement of its contents by this Court, petitioner has raised these other issues for this Court's possible consideration. If petitioner should prevail in his contentions that violations by officers of the courts of Georgia proscribed by this State's constitution mandates that they are ineligible to hold or seek office, it would necessitate new elections to replace these officers. The public's interest in the outcome of this case is great. It would be for the good of the welfare of the general public if this Court would delay the general election to be held November 7, 1978 to avoid great expense and indecision as to the legality of said officers being elected to office rather than appointment to the judiciary as prescribed by the Constitution of the United States. There are also questions raised which should be answered in view of alleged violations of Title 42 U.S.C. §1971. Petitioner feels that his allegations are of such a valid nature that the interest of all of the State would be served by a quick resolution of the issues raised by his facts. The issuance of strong medicine by this Court via a writ of mandamus to the District Court to permit resolution of these issues in view of the commands of the Georgia Constitution is greatly needed.

> "(Art. VII, Sec. III) Paragraph VII. Profit on public money - The receiving, directly or indirectly, by any officer of State or County, or member or office of the General Assembly of an interest, profits or perquisites, arising from the use or loan of public funds in his hands or money to be raised through his agency for the State or County purposes shall be deemed a felony, and punishable as may be prescribed by law, a part of which punishment shall be a disqualification from holding office."

Further,

> "(Art. V. Sec. 1) Paragraph 1, Governor, term of office; compensation and allowance - The compensation and allowance

> of the Governor shall be as provided by law. No Governor shall receive any emolument from the United States, or either of them, or from any foreign power."

Further,

> "Georgia Code Sec. 24-2606 (323) Salary"
> "The annual salary of the Judges of the Superior Courts shall be, and the same is hereby fixed in the sum of $32,500 .."
> "The salary herein fixed shall be paid by the State treasury in 12 equal monthly instalments..."
> "The salaries herein fixed shall be the total compensation to be paid by the State to the officials herein named, and shall be in lieu of any and all other amounts now provided by law...except mileage of judges on official business away from home county and the contingent expense allowance provided in Section 24-2606.2."

Georgia Code Sec. 24-102 (4642)

> "When Judicial Officer Disqualified"
> "No judge or justice of any court, no ordinary, justice of the peace, nor presiding officer of any inferior judicature or commission shall sit in any cause or proceeding in which he is pecuniarily interested..."

Further,

> "Art. 1, Sec. II) Paragraph IV" - The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duties of one, shall, at the same time exercise the function of either of the other, except as herein provided."

It is within the power of this Court to consider those issues raised by petitioner. It is prayed that the Court will consolidate all of the facts raised by petitioner as the issues and parties are parallel in No. 78-2342 and No. 78-3057.

> "Art. VI, Sec. III) Paragraph I. Terms, etc., of Superior Court Judges" - "Notwithstanding the provisions of this Section providing for a term of four years for judges of the superior courts and notwithstanding any other provision of this Constitution, the term of office of each of the Judges of the Superior Court of the Atlanta Judicial Circuit shall be for eight years and until his successor is qualified."

Supreme Court and Court of Appeals Justices are elected for terms of six years.

> (Art. VI, Sec. II) Paragraph III. Term of Office"
> "The Justices aforesaid shall hold their offices for six years, and until their successors are qualified. They shall be elected by the people at the same time and the same manner as members of the General Assembly. In case of a vacancy which causes an unexpired term, the same shall be filled by executive appointment, and the person appointed by the Governor shall hold his office until the next regular election, and until his successor for the balance of the unexpired term shall have been elected and qualified. The returns of such elections shall be made to the Secretary of State, who shall certify the results to the Governor, and commission shall issue accordingly."

ABUSE OF DISCRETION

From all of the appendices and statements herein it is clear that the district court clearly abused its discretion by remanding petitioner's removal action and by not exercising its jurisdiction over parties sought to be joined. As contained in briefs, motions and petitions attached as appendices, raising questions of law and citations thereof which forbid the rulings made by the trial court and court of appeals, it is clear that petitioner's right of due process protected by the Fifth Amendment have been denied by these Courts. A trial court judge does not have the statutory power to deny peitioner right of appeal pursuant to Title 28 U.S.C. §1447(d) of §1443 and by law the trial court must uphold the authority of the federal court system and exercise its powers to punish those for disobedience to its lawful orders.

CONCLUSION

WHEREFORE, it is respectfully prayed that this Court take jurisdiction of this appeal under Titles 28 U.S.C. §s 1651, 2071, 2072 and the Fifth Circuit be reversed in denying petitioner a writ of mandamus to enforce his right of due process in the district court and this Court issue a writ of mandamus to the district court compelling it to obey the Rules of Procedures and cause a preliminary injunction to issue and declaratory relief granted against the officers of the State named and that they be enjoined from seeking or holding office until such time as a full evidentiary hearing is had on the facts alleged and issues raised in petitioner's removal action and grant petitioner any and all other relief that this Court may deem just and fair according to the law of the United States and its Constitution. Some of the officers of the judiciary of Georgia violating petitioner's rights are contained in App. 19.

Respectfully submitted,

BY Roy Charles Bell, Sr.
ROY CHARLES BELL, SR., PRO SE

103 Broad Street, S. W.
Atlanta, Georgia 30303
(404) 577-4691

U.S. COURT OF APPEALS
FILED
Oct 17 '78

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. [illegible]

78-5660

IN RE:

ROY CHARLES BELL, SR.,

Petitioner.

- - - - -
On Petition for Writ of Mandamus and/or Prohibition
to the United States District Court for the Northern District of Georgia
- - - - -

Before GODBOLD, CLARK and RUBIN, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus and/or prohibition is DENIED.

4-32

APPENDIX #1

RECEIVED
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SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ROY CHARLES BELL, SR., Petitioner-Appellant,	)	
VS.	)	NO. 78-3057
CLARICE BELL CHURCH, ET AL., Respondent-Appellee.	)	78-5360

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Roy Charles Bell, Sr., petitioner-appellant, pro se, proceeding in forma pauperis, hereby appeals to the Supreme Court of the United States from the order, dated October 17, 1978, denying petitioner's petition for writ of mandamus and/or prohibition as to the above-styled action. This appeal is taken pursuant to Titles 28 U.S.C. §s 1651, 2071, 2072.

Respectfully submitted,

BY Roy Charles Bell Sr.
ROY CHARLES BELL, SR., PRO SE

103 Broad Street, S. W.
Atlanta, Georgia 30303
(404) 577-4691

November 2, 1978

No. 659465

RECEIPT FOR CERTIFIED MAIL

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Office of Clerk, 5th Circuit
STREET AND NO. 600 Camp St.
P.O. STATE AND ZIP CODE New Orleans, Louisiana 70130

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NOA, Supreme Ct. (5th Cir. Appeal Docket)